

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1059 of 2018

1. Azalfa Building Construction Private Limited a duly incorporated Company having its Registered office at House No. 506A/1, New Azimabad Colony, Mahendru, P.S.- Bahadurpur, Patna- 800006, through its Managing Director, Naushad Alam, S/o Md. Adalat Hussain, resident of House No. 506A/1, New Azimabad Colony, Mahendru, P.S. Bahadurpur, District- Patna.
2. Naushad Alam, S/o Md. Adalat Hussain, resident of Hose No. 506A/1, New Azimabad Colony, Mahendru, P.S.- Bahadurpur, District Patna, the Managing Director of Azalfa Building Construction Private Limited.

... .. Appellant/s

Versus

1. Gharodana Buildcon Private Limited a duly incorporated company, having its Registered office at Mahadevi Apartment, Kashi nath Lane, East Lohanipur, P.S.- Kadamkuan, District Patna, through Managing Director, Sri Gopal Sharan Bhartia, S/o Sri Sadhu Sharan, resident of Mohalla- Das Lane, East Lohanipur, P.S.- Kadamkuan, District- Patna.
2. Gopal Sharan Bhartia, S/o Sadhu Sharan, Resident of Mohalla- Das Lane, East Lohanipur, P.S.- Kadamkuan, District Patna the Managing Director of Gharonda Buildcon Private Limited.
3. Mala Bhartia, W/o Gopal Sharan Bhartia, Resident of Mohalla- Das Lane, East Lohanipur, P.S. Kadamkuan, District- Patna.
4. Sachidanand Singh, S/o Ram Swaroop Singh, Resident of Mohalla- Flat No. A -1, Prince Apartment, Christian Colony, Budha Colony, P.S.- Budha Colony, District- Patna, presently residing at Mohalla- 101, Hardi Estate, Bank Road, P.S.- Gandhi Maidan, District- Patna.
5. ABM Developer Private Limited, a duly incorporated Company, having its Registered office at 101, Hardi Estate, Bank Road, P.S.- Gandhi Maidan, District- Patna and its office at Mohalla- Bari Path, Hathwa Market, P.S.



Pirbahore, District- Patna, through its Managing Director, Sachidanand Singh, S/o Ram Swaroop Singh, Resident of Mohalla- Flat No.A-1, Prince Apartment, Christian Colony, Budha Colony, P.S.- Budha Colony, District- Patna.

6. Baptist Church Trust Association, a duly incorporated Company having its old Office at 44, Acharya Jagdish Chandra Bose Road, Calcutta and new Office at 19/E, Raj Niwas Marg, Delhi- 54 through its Secretary-Treasurer, Mr. Sumeet Nath.

... .. Respondent/s

Appearance :

For the Appellant/s :Mr. K.N, Choubey, Sr. Adv, Mr.Uma Kant Prasad,
Adv and Mr. Ajay Kumar Singh, Adv
For the Respondent no. 4 & 5: Mr. Rakesh Kumar Samrendra, Adv
For the Respondent no. 1 to 2: Mr. J.S. Arora, Sr. Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 05-11-2019

Heard learned counsel for the parties.

This miscellaneous appeal has been filed for setting aside the order dated 12.10.2018 passed by learned Sub-judge- 1st, Patna, in Title Suit No. 403 of 2018, by which the learned court below has passed an ex parte order of status quo under Order 39 Rule 3 of CPC without recording any finding that the object of granting injunction would be defeated by delay if ex- parte injunction is not granted as mandated under Order 39 Rule 3 of CPC.

Plaintiffs (Gharonda Buildcon Pvt. Ltd and its



directors) have filed Title Suit No. 403 of 2018 in the court of learned Sub-judge 1st Patna, for a declaration that two agreements dated 12.11.2010 executed by defendant nos. 1 Sachidanand Singh, and defendant no. 2 A.B.M. Developer Pvt. Ltd through its M.D. Sachidanand Singh in favour of plaintiffs are binding upon all defendants with a further prayer for a declaration that memorandum of understanding dated 17.10.2016 obtained from plaintiffs by defendant nos. 1 to 4 is illegal, unlawful and void as same was obtained under threat and durress.

Defendant no. 2 (A.B.M. Developer Pvt. Ltd), which is a registered company through defendant no. 1, entered into a development agreement on 18.10.1995 with defendant no. 5(Baptist Church Trust Association-landlord) to develop an area of 43 kathas 7 dhurs belonging to Baptist Church Trust Association(defendant no. 5) from its own resources in which developer was to get 68 per cent and rest 32 per cent was to be allotted to Baptist Church Trust Association-landlord (defendant no. 5).

Subsequently defendant no. 5(Baptist Church Trust Association-landlord) agreed to sell the entire built up area of its share in said project to defendant no. 2(A.B.M. Developer Pvt.



Ltd) for a total consideration of Rs. 1 Crore for which parties entered into agreement for sale dated 19.01.1996. However, said agreement dated 19.01.1996 was never acted upon as nothing was paid by defendant nos. 1 & 2 to defendant no. 5.

Defendant no. 1 wanted to sell his share in the holding company and plaintiffs became interested to purchase said shares holding of defendant no. 2 and defendant no.1 agreed to sell and transfer his entire share holding and also to sell and transfer the built up area of the share of Baptist Church Trust Association (defendant no. 5) in favour of plaintiffs for a consideration of Rs. 10 Crores for which two deeds of agreement were executed on 12.11.2010 between plaintiffs and defendant nos. 1 & 2 and in consideration initially Rs. 50 Lacs was paid by plaintiffs to defendant no. 1 & 2 and some more amount was paid thereafter. However, defendant no. 1 and 2 refused to act upon the terms of agreement dated 12.11.2010 and started negotiating for transferring the said project in favour of defendant no. 3 & 4 (appellants).

Board of Directors of ABM Developers Pvt. Ltd passed resolution in duly convened meeting on 29.08.2011 for making MOU with defendant no. 3 & 4(appellants) for construction of commercial complex which was signed by plaintiff nos. 1 and 2.



MOU dated 15.09.2016 was brought into existence between M/s ABM Developers Pvt. Ltd (defendant no. 2) and M/s Azalfa Building Construction Pvt. Ltd.(defendant no. 3 & 4-appellants) to develop the property.

Plaintiffs and defendant no. 1 to 4 entered into written agreement (MOU) dated 17.10.2016 by which defendant 1st party, agreed to pay Rs. 6,50,00,000/- to plaintiffs 2nd party and Rs. 1,00,00,000/- to Krishna Rungta. Memorandum of understanding dated 17.01.2016 was acted upon and plaintiffs have received Rs. 2,60,00,000/-, as such they cannot challenge the MOU or enforce the agreement dated 12.11.2010, but have got right to recover the balance amount in terms of MOU from defendants.

Plaintiffs prior to filing of suit instituted an FIR against the defendant for not making payment in terms of MOU and in said FIR he has not stated that MOU was signed by him under threat and duress.

It has been contended by learned senior counsel for the appellants that pursuant to entering into MOU dated 17.10.2016 as well as agreement-cum-assignment dated 10.08.2017, appellants have invested more than 10 Crores in making construction over the suit land which was well within the



knowledge of plaintiffs.

As the order has been passed by the trial Court under Order 39 Rule 3 while issuing notices to the defendants by which order of status quo has been granted although in the petition filed by the plaintiffs, the urgency was shown that defendants are going to alienate the suit property upon which ex parte order of status quo was passed. The trial Court which has passed an ex parte order under Order 39 Rule 3 is obliged to pass a fresh order on the injunction petition filed by the plaintiffs under Order 39 Rule 1 and 2 within 30 days from the date of order as all parties have appeared.

Accordingly, without expressing any opinion on merit of the case, the miscellaneous appeal is disposed of with a direction to the trial court to decide the injunction petition filed by the plaintiffs against which show cause has already been filed by the defendants within one month from the date of production/receipt of a copy of the order of this Court. Since, the plaintiffs had made a prayer for ex parte injunction order on the ground that they have apprehension that defendants are going to alienate the property, the trial court while passing order under Order 39 Rule 3 ought to have restrained defendants only to said extent i.e. alienation of the suit land and there was no



occasion to pass an order of status quo.

Accordingly, the order of status quo is vacated and the impugned order dated 12.10.2018 is modified to the extent that till passing of the final order by the trial court on injunction petition, parties are restrained from alienating the suit property.

This miscellaneous appeal is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2019
Transmission Date	NA

